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DOJ FOR CRIM AAG BRUCE SWARTZ  
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DOJ FOR OPDAT ALEXANDRE AND EHRENSTAMM  
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SUBJECT: INDONESIA'S ANTI-CORRUPTION EFFORTS - PART II  
OBSTACLES AND USG ASSISTANCE

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demotions, or transfers.

--Restrictive Rules of Evidence: Indonesian rules of evidence recognize only five types of evidence: testimony of a witness; testimony of an expert; testimony of the accused; a "document" as defined in the code; and an "indication" (evidence of an act relating to the crime, as proved by testimony or a document.) Common evidence used to prove corruption charges in other countries, such as undercover tapes, evidence recovered from computers, and financial records do not clearly fall within the five types of admissible evidence. In Indonesia, a civil law country, judges have no obligation to honor rulings on the admissibility of evidence in other cases, making it difficult to plan effective investigations.

--Lack of Effective Asset Forfeiture and Mutual Legal Assistance Laws: Indonesia's patchwork of poorly drafted asset forfeiture laws makes it difficult for police or prosecutors to locate criminal assets in a timely manner. As Indonesia has very few mutual legal assistance treaties (MLATs) with foreign countries, it can rarely recover funds transferred abroad. The legislature recently passed a mutual legal assistance law authorizing such international cooperation, but with its numerous exceptions likely will not substantially augment recovery of such assets.

--Weaknesses in the KPK Law: The 2002 law establishing the KPK gave the new agency special powers against corruption,

but other sections of the law created obstacles to effective prosecution. The special powers become available only when the KPK has commenced an "investigation." The law expressly prohibits the KPK from dismissing cases for insufficient evidence, as the Attorney General can do in other cases, and, as a result, the KPK must often make a difficult decision on whether to commence a formal corruption investigation based on incomplete evidence early in the process. Various definitions "losses to the state" in several Indonesian laws have led many investigators, prosecutors, and judges to conclude erroneously that in a corruption case a loss to the state must exist.

#### Weaknesses in Key GOI Anti-Corruption Institutions

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14. (SBU) Institutional weaknesses in key GOI anti-corruption bodies also acts to restrict the effectiveness of the current prosecution-based anti-corruption strategy. Although Attorney General Saleh enjoys a good reputation, internal reform at the AGO has advanced slowly, particularly when compared to General Sutanto's promising start with the Indonesian National Police (INP). The AGO has little experience dealing with outsiders, and few officials at the AGO have had exposure to foreign legal systems, giving the institution a strong inward-looking perspective. Saleh, an outsider with no prior experience within the agency, has no network of allies to push his reform program. The internal affairs division within the AGO remains weak and poorly regarded, and despite indications of corruption within the institution, we have seen no arrests or public reports of discipline. Many of the officials Saleh has appointed have little experience as line prosecutors and only a limited understanding of the obstacles to prosecuting corruption cases.

15. (SBU) An overly rigid and dysfunctional relationship between prosecutors and police hinders many investigations. The two groups rarely work together on investigations; when police hand over a dossier, prosecutors find themselves often dissatisfied with the results. The lack of police involvement once prosecutors accept a dossier for prosecution also produces problems. Prosecutors cannot conduct follow up investigations because the Indonesian Procedure Code gives police the primary authority to take investigative steps, including executing search warrants,

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obtaining bank records, and making arrests. Once an investigation ends, prosecutors take charge of the dossier and the arrested defendants, and have exclusive control of the process. Interagency law enforcement task forces seen routinely in the US remain rare in Indonesia; police and prosecutors seldom develop joint, long-term strategies and often miss opportunities to shake up corrupt networks. We have seen recent progress in this area: the KPK and Interagency Team to Eradicate Corruption feature integrated teams of investigators and prosecutors who work together.

16. (SBU) The evolving relationship between the media and law enforcement community complicates the prosecution of many corruption cases. Intense media interest in such cases coupled with distrust of the police often creates strong pressure on the police to act very openly, at times excessively so. As a result, the police announce or leak many investigations at the outset, alerting suspects and giving them time to destroy evidence, develop alibis, flee the country, or transfer assets abroad.

#### Corruption and Poor Performance in the Courts

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17. (SBU) Despite signs of progress, corruption within the law enforcement community and the judiciary provides a serious obstacle to prosecution of corruption. Big cases involve wealthy businessmen, bankers, or senior GOI

officials; they provide tempting extortion targets for crooked cops, prosecutors, and judges. That said, we have seen no indication to date of serious corruption in the Anti-Corruption Court, the KPK and the Team for Corruption Eradication, all created to circumvent corrupt law enforcement and judicial organs. INP Chief Sutanto has expressed determination to reduce police corruption.

¶18. (SBU) Unlike our Supreme Court, which selects a few cases of legal significance each year, nearly every legal case in Indonesia may go to the Supreme Court, creating a backlog of some 20,000 cases and a climate of uncertainty for important cases, which can sit in limbo for months. SBY appointed a Judicial Commission in 2005 to review the performance of judges, but the procedures and consequences of a negative review remain undefined; it seeks additional authority to remove poorly performing judges from the Supreme Court, some of whom actively resist this effort. A Prosecutorial Commission, also created recently, has fallen behind schedule and not yet become operational. On the positive side, these oversight organizations have sent a clear signal to judges and prosecutors about SBY's determination to tackle corruption.

#### Weak Audit Agencies and Inspectors General

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¶19. (SBU) Well functioning state audit agencies and Inspectors General (IG) offices provide an important defense against official corruption. The two state audit agencies do not perform an effective oversight role. The Finance and Development Control Agency (BPKP), the internal GOI audit agency, has no real mandate now that IG offices in line ministries have taken over its internal audit function. The Supreme Audit Board (BPK) has a constitutionally mandated external audit function, and with decentralization, the provincial and district governments have begun taking over that function at those levels. As part of a multi-million dollar program to rationalize, professionalize and strengthen audit functions and inspectors general, the Asian Development Bank (ADB) has recommended transferring BPKP resources and staff to regional auditors and the Supreme Audit Board.

¶10. (SBU) The Supreme Audit Board (BPK) seems a more powerful organization, with an independent status spelled out in the constitution. It, however, only slowly has begun

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programs that could reduce corruption in the bureaucracy. BPK publishes thick reviews of agencies' operations on its website, but has not developed media-friendly reports that would garner public attention. U.S. GAO and USAID advisors have suggested that the BPK create short summaries of its reports. Most of its management board consists of political appointees who have on occasion contradicted its Chairman, Harvard-trained economist and former Bank Indonesia Senior Deputy Governor Anwar Nasution.

#### Civil Service and Government Procurement Reform

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¶11. (SBU) The salary and incentive system in the civil service throws up perhaps the largest single obstacle to anti-corruption efforts. Civil servants do not have a performance pay incentive system, and get promoted based almost solely on length of service or patronage and paid strictly for number of hours worked. Formal salaries for most lower and middle level officials remain low, encouraging moonlighting and the collection of informal fees or bribes. A large part of many civil servants' salaries comes from formal but irregular "honoraria" that supervisors dole out when subordinates participate in special projects, training programs or conferences. The control senior bureaucrats exert over the compensation level of their subordinates greatly reduces the incentive to report

corruption. Applicants seeking positions with high potential for informal income (known as "wet" jobs) must often buy them, e.g., many police cadets pay significant fees to ensure their selection into the force.

¶12. (SBU) The corrupt government procurement system requires kickbacks and bribes even for mundane purchases. The World Bank estimates that 40 percent of official corruption comes in procurement; kickbacks of 10-20 percent provide a major source of income for officials. As noted Reftel, SBY's anti-corruption campaign has created a significant disincentive to corruption in this area to both positive and negative effect: anecdotal evidence suggests that in 2005 fear of prosecution slowed down the execution of block grants for support of district-level purchases, as officials no longer felt safe doing business as usual.

¶13. (SBU) SBY understands the systemic nature of the corruption problem, and has begun moving cautiously with a broad civil service reform program and other plans. Coordinating Minister Boediono told us in March that while SBY did not want to create a formal blue-ribbon commission to draft a civil service reform plan (as recommended by the World Bank), he asked Boediono to head an informal task force to draft a broad-based civil service reform plan that addresses salaries and benefits, incentives and promotions, human resource development, staffing levels and other issues. While a daunting task given the size and political power of the civil service, the World Bank and other donors stand ready to offer large-scale technical assistance. The National Development Planning Agency (BAPPENAS) seeks to revise Presidential Decree 80/2003 on procurement; the GOI might create a separate procurement agency.

#### Decentralization of Corruption

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¶14. (SBU) Prior to decentralization, businesses could make a single payment to an appropriate national official, who would make a few calls if a local problem arose. Decentralization has given local officials much greater autonomy, reduced oversight from Jakarta, and increased opportunities to engage in corrupt activities. When, for example, a prominent local coffee producer announced plans to set up a factory in an industrial estate east of Surabaya, the head of the village sent him a letter demanding the firm pay USD 2,000/month for "causing a disturbance," build a new soccer field for the village team,

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and a new office building for the village chief. The proliferation of small-scale, local corruption has become an investment climate issue; many businessmen complain that the Suharto-era system of one large bribe payment seemed more "business friendly" as firms could budget for it.

#### U.S. Anti-Corruption Assistance

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¶15. (U) GOI ministers and civil society leaders admire our strong record of prosecuting corruption and white collar crime, and USG agencies provide generous amounts of long-term development assistance and hands-on capacity building. USAID has budgeted approximately USD 36 million for 2004 - 2009 for anti-corruption development programs, including,

--Judicial Reform Initiative: Bolsters capacity at the Anti-Corruption Court and the Commercial Court.

--Financial Crimes Prevention Project: Assist the Financial Transaction Reports and Analysis Center (PPATK) with training and advice. Recently extended to include the AGO, KPK and Ministry of Finance's Inspector General to help investigate and prosecute money laundering and other crimes.

--Transparency in Local Governance: Helps local governments

develop sound policies, performance-based budgeting, and participatory planning.

--Justice Sector Reform Project: Helps the Supreme Court, AGO and Judicial Commission with internal reforms and transparency issues such as hiring, evaluation, retention and promotion policies for judges and prosecutors, together with new codes of ethics and improved public outreach.

--Working with the "Institute for the Independence of the Judiciary," AID helps the Judicial Commission establish transparent judicial selection procedures.

--In February 2006, USAID held a government procurement conference that produced recommendations to improve government procurement transparency, including a toolkit for local and provincial governments. The KPK, BAPPENAS, Indonesia Procurement Watch and USAID's Local Governance Support Program will collaborate on a procurement reform training program for local governments to increase procurement integrity.

¶16. (SBU) Since May 2005, the Department of Justice Resident Legal Advisor (RLA) has provided assistance to GOI officials working corruption cases. He has worked with the AGO on a draft mutual legal assistance law and appeared before Parliament to discuss witness protection legislation. The RLA has worked on a proposed regulation to allow the AG to dismiss charges against cooperating defendants in corruption cases, conducted a series of workshops on prosecuting complex corruption cases for the KPK and AGO, and participated in anti-money laundering training sessions for prosecutors. He has run seminars on undercover investigations and complex prosecutions for prosecutors of the AGO's Special Crimes Division, and a workshop for the 45-member Team for Corruption Eradication.

¶17. (SBU) DOS-funded International Criminal Investigative Training Assistance Program (ICITAP) Anti-Corruption Assistance Project has engaged with police to strengthen internal discipline. Funded at USD 600,000 through April 2007, the project hosted a January 2006 high-level workshop to review INP's internal discipline system, and supports INP financial management reform and capacity building.

¶18. (SBU) Although no extradition treaty or mutual legal assistance treaty exists between the US and Indonesia, in January 2006 the FBI, Diplomatic Security and DOJ cooperated to secure the return from the US of David Nusa Wijaya, an

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Indonesian fugitive convicted of embezzling bank liquidity support funds in the late 1990s. The RLA and DOJ's Office of International Affairs responded to a GOI request to recover proceeds from the Bank Negara Indonesia (BNI) fake letter of credit scam involving convicted felon Adrian Waworuntu. The consular section has requested identification information from INP on subjects of ongoing corruption cases to prevent them fleeing to the US.

What More Can We Do?

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¶19. (SBU) Our generous assistance to date in this area has won praise from ordinary Indonesians and GOI officials from President Yudhoyono on down. We can do more to demonstrate U.S. support for GOI anti-corruption capacity,

--During his February 2006 visit to Washington, Minister of Law and Human Rights Hamid Awaluddin told Deputy Secretary Zoellick the GOI wants an MLAT. When Attorney General Gonzales visited Jakarta in November 2005, Attorney General Saleh asked for help tracking down and returning corruption fugitives and their gains. Negotiating an MLAT would provide at little cost a new channel for cooperation on corruption cases, and boost bilateral law enforcement ties. We

recommend DOJ respond favorably to Hamid's request.

--Indonesia qualified for Millennium Challenge Corporation threshold status in November 2005 and plans an extensive anti-corruption initiative. We should continue engagement with the GOI to make sure it delivers results.

--State or DOJ should provide the FBI USD 75,000 to provide undercover equipment and training to KPK investigators to improve the capacity of the KPK to break open corruption cases, and work up the chain from lesser figures to those who direct and benefit from corrupt activity.

--The posting of a RLA has given the Embassy a means to provide hands-on capacity building assistance to prosecutors and investigators on complex corruption cases. The RLA also provides us a resident source of expertise on witness protection and whistle blower laws, immunity provisions, and criminal procedure reforms. We recommend INL continue to fund the RLA position in Jakarta, and if events warrant, consider expanding that support to fund a second RLA position.

--The KPK has requested information from DOJ on its investigation of Monsanto under the Foreign Corrupt Practices Act, and two KPK commissioners met DOJ prosecutors on this last year. Where possible, we recommend that DOJ provide information so the KPK can identify and prosecute Indonesian recipients of payments made on behalf of Monsanto.

--The ICITAP Anti-Corruption Assistance Project has had significant success working with INP on reducing corruption and promoting internal reform. We recommend the Department continue to fund this program; without additional assistance it ends in April 2007.

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